

WWR Ref. No. 06562552

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS (Eastern Division)**

ADVANCE PAYROLL FUNDING, LTD.,)	CASE NO. 08 C 1072
)	
Plaintiff,)	
)	
vs.)	JUDGE MILTON I. SHADUR
)	MAG. JUDGE ARLANDER KEYS
DURACO PRODUCTS, INC.,)	
dba DURACO PLASTICS)	
)	
Defendant.)	

**PLAINTIFF'S APPLICATION FOR AN ENTRY OF DEFAULT
PURSUANT TO FED. R. CIV. P. 55(A)**

Now comes Plaintiff, Advance Payroll Funding, Ltd. (hereinafter "Advance Payroll"), by and through counsel, and hereby applies to the Court and its Clerk for an Entry of Default against the Defendant Duraco Products, Inc. dba Duraco Plastics (hereinafter "Duraco"). The reasons for this Request are as follows:

On February 21, 2008, Advance Payroll filed a Complaint against Duraco in this matter. *See Docket Entry # 1.* Thereafter, upon Order of the Court, on March 12, 2008, Advance Payroll filed an Amended Complaint against Duraco. *See Docket Entry # 13.*

On March 25, 2008, Duraco was served with Summons and the Amended Complaint. *See Docket Entry # 17.* Pursuant to Fed. R. Civ. P. 12(a)(1)(A), Duraco was required to answer or otherwise respond to Advance Payroll's Amended Complaint within twenty (20) days, on or before April 14, 2008. *See Docket Entry # 17.* Duraco

has failed to do so, and therefore default should be entered by the Clerk of Courts pursuant to Fed. R. Civ. P. 55(a).

Fed. R. Civ. P. 55 sets forth the procedure for the entry of a default. Fed. R. Civ. P. 55(a) provides:

Entry. (a) When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules and that fact is made to appear by affidavit or otherwise, the clerk shall enter the party's default.

The Federal Rules of Civil Procedure make a clear distinction between the entry of default under Fed. R. Civ. P. 55(a), and the entry of a default judgment under Fed.R. Civ. P. 55(b). *Lowe v. McGraw-Hill Cos.*, 361 F.3d 335, 339 (7th Cir. Ill. 2004). The default should be entered upon the defendant's failure to plead or otherwise defend. *Id.*, citing Fed. R. Civ. P. 55(a).

Based on the foregoing, an Entry of Default against Defendant Duraco Products, Inc. dba Duraco Plasitcs should be entered by the Clerk at this time pursuant to Fed. R. Civ. P. 55(a).

Respectfully submitted,

WELTMAN, WEINBERG & REIS CO., L.P.A.

/s/ Robert T. Kuehl
Robert T. Kuehl (Ill. Bar No. 6271281)
Co-Counsel for Plaintiff
180 LaSalle Street, Suite 2400
Chicago, IL 60601
Telephone: (312) 782-9676
Facsimile: (312) 782-4201
Email: rkuehl@weltman.com

J. Charles Ruiz-Bueno (#0046806)
Pro Hac Vice/Lead Counsel for Plaintiff
Michael F. Schmitz (Ohio #0064842)
Pro Hac Vice/Co-Counsel for Plaintiff
Lakeside Place, Suite 200
323 W. Lakeside Avenue
Cleveland, OH 44113
Telephone: (216) 685-1169
Telephone: (216) 685-1106
Fax: (216) 685-4345
E-mail: jruizbueno@weltman.com
mschmitz@weltman.com

WWR Ref. No. 06562552

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS (Eastern Division)**

ADVANCE PAYROLL FUNDING, LTD.,)	CASE NO. 08 C 1072
)	
Plaintiff,)	
)	
vs.)	JUDGE MILTON I. SHADUR
)	MAG. JUDGE ARLANDER KEYS
DURACO PRODUCTS, INC.,)	
dba DURACO PLASTICS)	
)	
Defendant.)	

**PROOF OF SERVICE OF
PLAINTIFF'S APPLICATION FOR AN ENTRY OF DEFAULT
PURSUANT TO FED. R. CIV. P. 55(A)**

I, Robert T. Kuehl, certify as follows under penalty of perjury this 21st day of April, 2008.

1. I filed *Plaintiff's Application For An Entry Of Default Pursuant To Fed. R. Civ. P. 55(a)*, by filing it with the clerk of court by electronic means.
2. I further caused copies of *Plaintiff's Application For An Entry Of Default Pursuant To Fed. R. Civ. P. 55(a)* to be served by regular mail, pursuant to Loc.R. 5.3(a)(2) and Fed.R.Civ.P. 5(b)(2)(C), to DURACO PRODUCTS, INC., dba DURACO PLASTICS, c/o agent C T Corporation System, at the agent's last known address of 208 S. LaSalle Street, Suite 814, Chicago, IL 60604.
3. I further caused copies of *Plaintiff's Application For An Entry Of Default Pursuant To Fed. R. Civ. P. 55(a)* to be served by regular mail, pursuant to Loc.R. 5.3(a)(2) and Fed.R.Civ.P. 5(b)(2)(C), to DURACO PRODUCTS, INC., dba DURACO

PLASTICS, at its last known address of 1109 East Lake Street, Streamwood, IL 60107-4395.

Respectfully submitted,

WELTMAN, WEINBERG & REIS CO., L.P.A.

/s/ Robert T. Kuehl

Robert T. Kuehl (Ill. Bar No. 6271281)
Attorney for Plaintiff
180 LaSalle Street, Suite 2400
Chicago, IL 60601
Telephone: (312) 782-9676
Facsimile: (312) 782-4201
E-mail: rkuehl@weltman.com